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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,697	03/01/2002	Richard Franz	D-2998	4890
33197	7590	07/28/2004	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			SANDERS JR, JOHN R	
		ART UNIT	PAPER NUMBER	
		3737		

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

4W

Office Action Summary	Application No.	Applicant(s)
	10/087,697	FRANZ ET AL.
	Examiner	Art Unit
	John R. Sanders	3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 April 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. The finality of the previous Action has been rescinded, as Applicant has notified the Examiner of an improper basis for the Final Action.
2. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. **Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,523,954 to Kennedy et al. (“Kennedy”) in view of U.S. Patent No. 5,956,121 to Hosoi et al. (“Hosoi”), both of record.**
5. Regarding claims 1-3 and 12, Kennedy discloses a system and method for eye screening (FIG. 7) wherein a remote exam module (composed of a device to record corneal and retinal reflections, a data entry device, and a control system) collects eye images from the patient. This information is transmitted to the central analysis facility via a communication link (col. 6, line 57 - col. 7, line 6). The central analysis facility comprises a record database and means for displaying the images for skilled specialists (col. 2, line 47- col. 3, line 10; col. 7, line 31- col. 8, line 11).
6. Kennedy also discloses multiple images generated by light sources of varying spectrum (col. 8, lines 50-52). Though multiple images each corresponding to one of a plurality of light

sources are inherently obtained by a plurality of different examinations taken separately, Kennedy does not necessarily or expressly disclose a plurality of different examination *devices*. The disclosed photo-imaging device (FIG. 1), does however obtain both retinal and corneal reflections. One of ordinary skill in the art is aware that many prior art devices are only capable of obtaining either the retinal or the corneal reflections, depending on the type of examination being performed. Fundus cameras are not necessarily concerned with imaging the cornea, whereas a corneal topography device is not necessarily capable of acquiring retinal reflections.

7. Kennedy discloses the various conditions that may be detected by his invention, such as strabismus, myopia, hyperopia, astigmatism and cataracts (col. 4, lines 15-30). One of ordinary skill in the art is also aware of the availability of individual devices that are tailored to examine specific conditions. These separate devices perform the functions already disclosed by the device of Kennedy. Therefore, it would have been obvious to one of ordinary skill in the art to replace the photo-imaging device of Kennedy, which can detect multiple conditions, with a plurality of devices that each focus on collecting information pertaining to a particular condition. A controller to connect and receive information from the devices would likewise be obvious for the purposes of information transmission to a central data facility.

8. Kennedy discloses the above limitations but does not disclose expressly the central analysis facility directing the examination. However, over a communications link such as in Kennedy the central analysis facility would be capable of directing the examination (see rejection of claims 6 and 17 below). Also, Hosoi discloses the remote operation of examination devices by an examiner in a location other than the patient (col. 6, lines 17-39). Regardless of the tests performed, Hosoi discloses remote operation of examination devices *in a*

telecommunication system for examining an eye. As Kennedy is directed also towards a telecommunication eye examining system, one of ordinary skill in the art would find Hosoi a relevant reference. Though Hosoi and Kennedy may disclose different examination devices, the suggestion for remote operation of examination devices is present in Hosoi, which one of ordinary skill in the art would find obvious to apply to another eye examination system with telecommunication capability. It would have been obvious to one of ordinary skill in the art to modify Kennedy to direct the examination remotely, as suggested by Hosoi.

9. Regarding claims 4, 5, 25 and 27, Kennedy is capable of obtaining information relating to both retinal and corneal reflections, i.e. fundus information, retinal information, corneal topography, and refraction information.

10. Regarding claims 7-9, Kennedy discloses remote data entry via a touch screen and/or voice recognition (col. 8, lines 12-38) and a questionnaire (col. 14, lines 2-5).

11. Regarding claims 10, 15 and 24, Kennedy discloses posting relevant patient information on the web (col. 7, lines 2-6).

12. Regarding claim 11, digital signals are inherent as a part of Internet data transmission.

13. Regarding claim 13, 14 and 21, Kennedy discloses creation and retrieval of examination records (col. 7, lines 14-21). It is obvious to update a patient record to reflect newly acquired information, as the purpose of a patient record is to contain an up-to-date history of the patient's examinations.

14. Regarding claim 16 and 22, Kennedy discloses sending a report to the patient via the communication link (col. 2, lines 47-65).

15. Regarding claim 6, 17-20, 23 and 26, Kennedy discloses the aforementioned limitations, but does not expressly disclose teleconferencing. Hosoi discloses an eye examination telecommunication system that utilizes real-time teleconferencing (col. 3: 52-55; col. 6: 41-50).

16. Regarding claim 17, Kennedy does not expressly disclose relaying directions from the diagnostic center to the remote location. However, communication via teleconferencing as disclosed by Hosoi would inherently relay directions from the location of the examiner to the patient, as the examiner would inherently be instructing the patient during such a real-time relay.

17. It would have been obvious to one of ordinary skill in the art to modify Kennedy to include real-time teleconferencing in order for an examiner to confer with the remote patient, as in Hosoi.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Sanders whose telephone number is (703) 305-4974. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


jrs



MICHAEL J. HAYES
PRIMARY EXAMINER